

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

0-0

BLACK HILLS HELICOPTERS INC., a South :  
Dakota Corporation,

CIV. 5:24-cv 5012

Plaintiff,

:

v.

:

BLACK HILLS AERIAL ADVENTURES, :  
INC., a South Dakota Corporation,

**COMPLAINT**

Defendant.

:

:

:

0-0

Plaintiff, Black Hills Helicopters Inc. (“Black Hills Helicopters”), for its Complaint  
against the Defendant, Black Hills Aerial Adventures, Inc. (“BHAA”), states and alleges as  
follows:

**Parties**

1. Black Hills Helicopters is a corporation organized and existing under the laws of  
South Dakota, with its principal place of business in Keystone, South Dakota.

2. BHAA is a corporation organized and existing under the laws of South Dakota,  
with its principal place of business in Custer, South Dakota.

**Jurisdiction**

3. This is a civil action for cybersquatting and trademark infringement in interstate  
commerce arising under the laws of the United States, in particular, the Lanham Act, codified at

15 U.S.C. §§ 1114 and 1125. This Court has jurisdiction over this claim under 28 U.S.C. § 1338(a), 15 U.S.C. § 1121, and 28 U.S.C. § 1331.

4. This is also a civil action for unfair competition under state law arising from the same operative facts as, and joined with substantially related claims under, the Lanham Act. This Court has jurisdiction over these claims under 28 U.S.C. § 1338(b) or 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over BHAA because BHAA is domiciled in South Dakota, because BHAA transacts business in South Dakota, because BHAA has committed acts resulting in the accrual of a tort in South Dakota, and because subjecting BHAA to the jurisdiction of South Dakota is not inconsistent with the federal law of Due Process.

**Black Hills Helicopters, its business, and its Mark.**

6. Black Hills Helicopters was established in 2014 and offers helicopter tours to the public in a variety of locations in the western South Dakota, including Mount Rushmore, Horse Thief Lake, and Sylvan Lake.

7. Black Hills Helicopters has continuously used the service mark “Black Hills Helicopters” (the “Mark”) since that time in conjunction with the provision of its helicopter tour services.

8. Due to Black Hills Helicopters’ long-time and continuous use of the Mark in conjunction with its provision of services in South Dakota, the Mark has come to be recognized by consumers as an indication of the source and quality of Black Hills Helicopters’ services.

9. Black Hills Helicopters is also the owner of all right, title, and interest in United States Trademark Registration Number 5803359, which issued on July 16, 2019, for the Mark in standard characters (“Black Hills Helicopters”) for use with services described as “Providing

transport for sightseeing tours by Helicopter” in International Class 039. A true and correct copy of the TSDR summary showing this registration is live is attached as Exhibit A.

10. Over the years, Black Hills Helicopters has expended substantial time, effort, and money in advertising, promoting, and marketing its services under the Marks.

11. For example, Black Hills Helicopters promotes and has promoted its services on its website, [www.blackhillshelicopters.com](http://www.blackhillshelicopters.com), where customers and potential customers can obtain information about the services offered by Black Hills Helicopters and directly book tours.

12. Direct bookings of tours on its website constitute more than 25% of Black Hills Helicopters’ annual sales.

**BHAA and its infringing 301 redirect.**

13. BHAA is a competitor that also offers helicopter tours in the region.

14. Recently, Black Hills Helicopters discovered that BHAA owns and operates the confusingly similar domain name [www.blackhillshelicopter.com](http://www.blackhillshelicopter.com) (the “Infringing Domain”).

15. The only difference between this domain and Black Hills Helicopters’ domain is the deletion of the character “s”.

16. Any user who attempts to go to the Infringing Domain is automatically re-directed to the website [www.coptertours.com](http://www.coptertours.com) through what is known as a 301 redirect.

17. The domain [www.coptertours.com](http://www.coptertours.com) is owned and operated by BHAA and is used for BHAA’s competing business.

18. After a user is redirected from the Infringing Domain to [www.coptertours.com](http://www.coptertours.com), the user will see competing helicopter tours offered by BHAA.

19. As such, BHAA is using a confusingly similar domain name to redirect Black Hills Helicopters’ actual and potential customers to BHAA’s website for competing services.

20. The harm to Black Hills Helicopters is apparent. When actual or potential customers try to reach Black Hills Helicopters' website, but inadvertently leave out the "s," they are redirected to a competing business offering the same services.

21. This results in financial damage to Black Hills Helicopters in the form of lost revenues and unfairly benefits BHAA.

22. On or about December 12, 2023, Black Hills Helicopters, through counsel, sent a letter to BHAA demanding that BHAA remove the 301 redirect and surrender and transfer the Infringing Domain to Black Hills Helicopter.

23. To date, BHAA has not complied with these demands.

24. The Infringing Domain was renewed as recently as May 2023.

**Count I – Cybersquatting**  
**(15 U.S.C. § 1125(d))**

25. Black Hills Helicopters restates all previous allegations and incorporates them by reference.

26. Black Hills Helicopters is the owner of U.S. Registration No. 5803359 for its Mark and has valuable trademark rights under the Registration of the "Black Hills Helicopter" standard-character mark.

27. BHAA is the owner and operator of the Infringing Domain, which is evidenced by the fact that the Infringing Domain redirects users to BHAA's website offering competing services.

28. The Infringing Domain is nearly identical to and confusingly similar to the Mark.

29. BHAA's conduct constitutes "typosquatting," also known as URL hijacking, which is a form of cybersquatting that targets users who incorrectly type a website address into their browser.

30. BHAA has no rights or legitimate interest in the Infringing Domain, specifically, BHAA does not operate under the name “Black Hills Helicopters.”

31. BHAA is not making a legitimate non-commercial use of the Infringing Domain, because BHAA intends to realize a commercial gain by misleadingly diverting consumers to its website offering competing services.

32. BHAA is using the Infringing Domain in bad faith, because the Infringing Domain is being used for the sole purpose of disrupting Black Hills Helicopters’ business by diverting consumers who inadvertently forget to include the “s” in Black Hills Helicopters’ domain name to a website with competing services offered by BHAA, and because BHAA is using the Infringing Domain to intentionally attract users for commercial gain by creating a likelihood of confusion with the Mark.

33. BHAA’s bad faith is further evidenced by the fact that BHAA was aware of Black Hills Helicopters and the Mark, and has used, and continues to use, the Infringing Domain, to BHAA’s benefit and Black Hills Helicopter’s detriment.

34. BHAA’s cybersquatting has damaged Black Hills Helicopters in an amount to be determined at trial, but in the amount of no less than \$100,000 in statutory damages as contemplated by 1117(d).

35. This is an exceptional case as defined by the Lanham Act. Despite being given formal notice of its cybersquatting, BHAA has continued to use the Infringing Domain to re-route users to its website offering competing services, entitling Black Hills Helicopters to multiple damages and attorneys’ fees.

36. BHAA’s cybersquatting is causing irreparable harm to Black Hills Helicopters’ business and goodwill, and will continue to cause such irreparable harm if not enjoined.

**Count II – Trademark Infringement**  
**(15 U.S.C. § 1114)**

37. Black Hills Helicopters restates all previous allegations and incorporates them by reference.

38. BHAA's Infringing Domain is confusingly similar to Black Hills Helicopter's registered Mark.

39. BHAA is using the Infringing Domain in connection with the sale of services.

40. Specifically, consumers are likely to become confused as to the origin and source of the parties' services when they are redirected to BHAA's website after entering the Infringing Domain.

41. BHAA's infringement has damaged Black Hills Helicopters in an amount to be determined at trial.

42. BHAA's infringement is causing irreparable harm to Black Hills Helicopters' business and goodwill, and will continue to cause such irreparable harm if not enjoined.

**Count III – Unfair Competition**  
**(State Law)**

43. Black Hills Helicopters restates all previous allegations and incorporates them by reference.

44. BHAA's cybersquatting and infringement constitutes unfair competition and wrongful confusion of source under equivalent provisions of state common law.

45. BHAA's conduct has damaged Black Hills Helicopters in an amount to be determined at trial.

46. BHAA's conduct is causing irreparable harm to Black Hills Helicopters' business and goodwill, and will continue to cause such irreparable harm if not enjoined.

WHEREFORE, Black Hills Helicopters prays for judgment against BHAA as follows:

1. For a judgment against BHAA in the amount of Black Hills Helicopters' actual damages and an accounting of BHAA's profits because of its unlawful actions;
2. For a judgment that, given BHAA's actions, this is an exceptional case under the Lanham Act (15 U.S.C. § 1117(a)), entitling Black Hills Helicopters to its attorneys' fees and treble damages;
3. For all statutory damages to which Black Hills Helicopters is entitled, including statutory damages of \$100,000 for BHAA's cybersquatting under 1125 U.S.C. § 1117(d);
4. For all attorneys' fees and costs to which Black Hills Helicopters is entitled whether by statute or other applicable law;
5. For prejudgment interest on all of Black Hills Helicopters' damages as provided by statute or other applicable law
6. For a judgment ordering transfer of the Infringing Domain to Black Hills Helicopters under 15 U.S.C. § 1125(d)(1)(C);
7. For preliminary and permanent injunctive relief enjoining BHAA from using the Infringing Domain and/or the 301 redirect to divert users from the Infringing Domain to BHAA's website; and
8. For such other relief as this Court deems just and equitable.

Dated this 20th day of February, 2024.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ Joel E. Engel III

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(605) 336-3890

Attorneys for Plaintiff



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Black Hills Helicopters, Inc.

(b) County of Residence of First Listed Plaintiff Pennington  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joel E. Engel III, Woods, Fuller, Shultz & Smith P.C., 300  
S. Phillips Ave., Suite 300, Sioux Falls, SD 57104

## DEFENDANTS

Black Hills Aerial Adventures, Inc.

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Marli A. Schippers, Nooney & Solay, LLP, 326 Founder Park  
Dr., Rapid City, SD 57701

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input checked="" type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 USC 1125(d) and 15 USC 1114Brief description of cause:  
Cybersquatting and trademark infringement under the Lanham Act

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

2-20-2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joel E. Engel III

## FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.